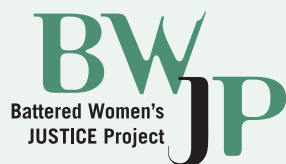


Responsible Attorneys: Seeking Justice for Battered Women In Protection Order Cases



“Under our constitutional system, courts stand against any winds that blow, as havens of refuge for those who might otherwise suffer.”

–Justice Hugo Black, Chambers V. Florida



Your Rights

You have the right to:

- ◆ Be treated with respect and dignity by your attorney; and,
- ◆ Understand all communications related to your case.

In addition, your attorney should:

- ◆ Use plain language to explain your rights and legal options. If you do not understand something, ask your attorney to explain it differently.
- ◆ Arrange for an interpreter to be present for all appointments and court dates if you do not speak English. Find out if you will have to pay for any of these services.
- ◆ Ask the court to make accommodations for your disabilities so that you can fully participate.
- ◆ Ask that there be no interruptions while you tell your story.
- ◆ Listen to your story without interruption and without judgment.
- ◆ Be on time for your appointment.
- ◆ Ask you how you would like to be addressed. If you are not asked, tell the attorney your preference.

Your attorney should demonstrate respect for you, your knowledge level, class, abuse experience, etc. The attorney should support your right to control the direction of your case in terms of setting or changing goals in the course of your litigation.

Legal Representation

It should be clear from the beginning which legal problems your attorney will be working on. Tell your attorney what you want help with. For example, mention if you need help with just your protection order, or also with custody and divorce.

Your attorney should also explain which decisions in the case belong to you, and which belong to the attorney. For example, you might decide which people you want contacted to be witnesses. Your attorney might decide which of those people the judge should hear.

You and your attorney should determine the safest ways to communicate throughout your case. Decide which telephone numbers are safe to use, where not to leave a message, whether your address is confidential, and where to send mail.

Your attorney should explain all costs up-front, work with you on a payment plan and talk with you about how you can minimize the costs by assisting the attorney. You should understand how you will be billed for your attorney's work. Ask if there is a different rate for phone advice versus court appearances; if you will be charged for 15 minutes of the attorney's time even if you only spend 5 minutes on the telephone; or if there is a different pay rate for working with the attorney's paralegal or secretary.

NOTE: Federal law now permits you to file papers for a protection order, get all the court papers served on your abuser, and make your copies without any charge to you.

Discussing the Abuse



The attorney or the paralegal should ask you about the history, pattern, injuries, coercive tactics, threats and frequency of violence and controlling behaviors toward you and your children. Bring a list of abusive incidents, patterns, behavioral

changes that you fear, to your appointment. Include the names and contact information of any people who have seen or heard of the abuse first-hand. Make sure that the attorney or paralegal does not automatically assume that s/he understands the violence. Assumptions may cause the attorney to miss important cues about any increased risk of injury and abuse.

Your attorney should ask you questions like, "What does that particular behavior (the abuser's) mean to you?" S/he should also ask if anything has changed recently that has made you more fearful or makes you think the abuser might use more severe violence.

Finally, your attorney should ask for any physical evidence of the abuse, such as photographs of injuries, hospital records, records of wages you lost because of the abuse. It is up to your attorney to listen to all of the information you provide and then decide which pieces can be used as evidence in your case.

Assessing Risk

The attorney or paralegal should help you think about where, when and under what circumstances your batterer is likely to abuse you or the children. For instance:

- ◆ Are certain days (holidays, birthdays, paydays) more dangerous than others?
- ◆ Is your abuser less likely to be violent or threaten you when close relatives are around?
- ◆ Is your abuser more likely to be abusive at your workplace, in the car, at home?
- ◆ Which are the most dangerous places historically?

Your attorney should help you think about threats of suicide or homicide and any attempts or plans that the abuser has talked about. The attorney should ask about guns or other weapons that the abuser has used or talked about using against you. The attorney should ask about any addiction, depression and other mental health issues the abuser may have.



Safety Planning

The attorney or paralegal should help you think about how you can enhance your own safety, and what you can do to keep your family safe.

You may consider:

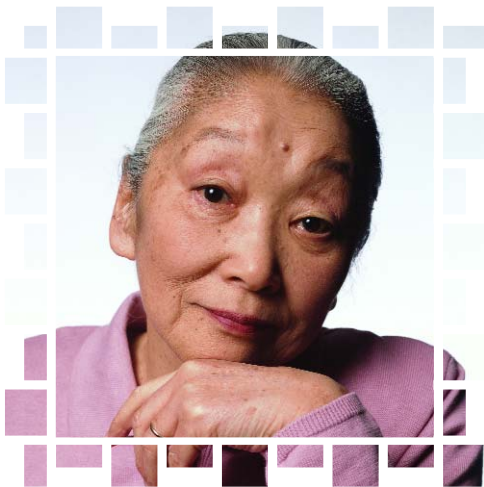
- ◆ Whether to have the batterer excluded from your home;
- ◆ Whether you want the batterer to have “no contact” with you in person, on the phone, through another person, at your home, work, church, school, etc.;
- ◆ Whether to change the locks;
- ◆ An escape plan from your home;
- ◆ If there is a neighbor whose home you can go to, if you fear abuse;
- ◆ If a neighbor can call the police, if they hear trouble in your home;
- ◆ Identifying safe places for your pets in the event you have to flee;
- ◆ Whether you should move, go to different stores, keep a different schedule, take a different route to work, or change your telephone number;
- ◆ Whether there is someone you can trust to help you pick up or drop off your children for visitation with your abuser;
- ◆ Identifying people in your life who will help you, like family members, friends, neighbors, co-workers, and how they can be helpful;
- ◆ Your need for emergency shelter, food and utility assistance; and,
- ◆ Whether to get a free cell phone from the local domestic violence program in case you need to call 911 for police assistance.

Legal Options and Goals

It is your attorney's job to gather all the information you make available and then assess how the law can help you. Not all of your concerns can be addressed by the court. A good attorney can help you determine where to seek help for those problems that the court is not able to resolve.

It is your attorney's responsibility to identify any legal options you have and then to explain them to you in a way that you can understand. This explanation should include a description of the strengths and weaknesses of your case, as well as potential outcomes.

Once you have decided which options will work best for you, your attorney should help you define specific, realistic and legal goals that each of you will work to accomplish. If your goals change at any time during the litigation, for whatever reason, your wishes should be respected and a new strategy for maximizing your safety should be planned.



Developing Court Papers

The information you provide about the abuse and what you need to be safe will help your attorney in developing the court papers. You have a right to know who will have access to your information, whether it will remain in the attorney's office, and what will be included in actual court documents or hearings. You must tell your attorney which information you wish to keep confidential.

You may be asked to complete a questionnaire that will help your attorney or paralegal in drafting your court papers. If you are working with a paralegal, you may be asked to go to the courthouse to complete the papers on your own. Ask for help, if you have any questions or cannot complete the papers.

Your attorney should write a proposed order that contains all the help you are asking of the court. It is important that the order provides for your safety, the safety of your children, economic needs of your family and the ability to make day-to-day decisions about your children and your home without having to get your abuser's consent. Your order should provide for support for your children. The proposed order should be clear and written so that you can easily understand it.

You can help the attorney if you can provide a description of the abuser and several addresses where s/he may be located, work and recreational schedules, telephone numbers, identifying marks, driver's license, motor vehicle number or license plate numbers, date of birth and Social Security number. This information is important in making sure that any court papers can be delivered to the abuser by law enforcement, and that an order is easier to enforce.

Before filing any papers with the court, your attorney should make them available for you to review for accuracy and to make sure your goals for the case have not changed since your initial discussions.

Your Legal Knowledge

Your attorney should explain to you the differences between the “civil” and “criminal” court. S/he should help you understand what “level of proof” you are going to need to convince the judge that you are entitled to a protection order. Your attorney should describe the court process; for example, where you need to be, how you should be dressed, how many times you may have to come to court, who can come with you, where you will stand when you address the judge, what happens if there is a “continuance” in your case, and how long your case may actually take.

In most states, the court can include anything in an order that it reasonably believes will keep you safe and prevent further violence by the abuser. State law usually lets the court do the following:

- ◆ Remove the abuser from your home;
- ◆ Order the abuser not to contact you or have anyone else contact you for him;
- ◆ Order the abuser to pay support for you and the children;
- ◆ Require the abuser to pay your relocation costs;
- ◆ Order the abuser to surrender all firearms to law enforcement; and,
- ◆ Give you temporary custody of the children.

In some states, the court can order that the abuser pay the costs of your wages or property that were lost because of the abuse. If you fear that the abuser will take the children out of the country, the court has the ability to order your abuser to give you or a neutral party the children’s passports and birth certificates.

Being Diligent



Your abuser may be represented by an attorney who wants your attorney to limit what you ask for in your court order. You and your attorney should decide what you need and must have, as well as what

you can compromise, before the beginning of any negotiations.

If your abuser does not agree to what you are asking of the court, your attorney should schedule a hearing. Your attorney should work to make your court experience a fair, safe and respectful one. Ask questions so that you can be prepared.

Every court is different and each judge has a different knowledge and understanding of the law. Some judges fully understand the issues involved in a domestic violence case, while others understand less. Your attorney should urge the judge to consider the unique dangers presented by your case as well as the protections and assistance that you need to remain safe.

If you do not speak or read English, your attorney should ask the judge to appoint an interpreter during the hearing. If you are hearing impaired, the court should provide an interpreter for your hearing. You should not have to pay for interpreters that are used for court purposes. Interpreters should not be friends or associates of your batterer. Try to avoid using minor children as interpreters.

The Court Order

Some abusers will not follow the order from the court. To make sure that your local police will enforce your order, your attorney should:

- ◆ Make sure that the abuser and the police get copies of all court orders;
- ◆ Give you several copies of the order; one to keep with you at all times, one to give to the children's school, another for your employer, one to give to a trusted friend for safekeeping. (You should be able to get additional copies from the court without cost, if you need them);
- ◆ Provide a physical description of the abuser to the local police department where you live and work;
- ◆ Talk with your family and friends about what they can do to help you remain safe;
- ◆ Make sure that the protection order is entered into the state and federal computer registries so that your order can be enforced in any location;
- ◆ Make sure that the abuser's firearms are given to law enforcement for storage;
- ◆ Make sure that the abuser pays support, gives you back your property, and is not allowed to get new passports for the children; and,
- ◆ Ask the police to arrest, and the court to penalize the batterer if the terms of the protection order are violated.



For help locating other services for abused adults, call:

National Domestic Violence Hotline
1-800-799-SAFE (7233)

To contact your local domestic violence program or your local bar association or legal services/aid office, look in the emergency or human services pages of your phone book.

Responsible Attorneys was prepared by the Battered Women's Justice Project (BWJP) of the Pennsylvania Coalition Against Domestic Violence.

For more information please contact BWJP at:
1-800-903-0111 ext. 2
6400 Flank Drive, Suite 1300
Harrisburg, PA 17112.

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BWJP
Battered Women's
JUSTICE Project